THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.31113 of 1997

Date: 21-03-2007

Between:

M. Kanaka Chandram

Petitioner

And

The Prohibition & Excise Inspector, Jangaon,

Warangal District and others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.31113 of 1997

ORDER:

1. Though the writ petition has been instituted questioning the correctness of the orders passed on 09-09-1997 by the third respondent through which he had confirmed the orders passed by the second respondent-Deputy Commissioner of Prohibition and Excise, Warangal dated 17-02-1997, the writ petitioner had taken out W.P.M.P. No.7366 of 2007 seeking directions to the second respondent-Deputy Commissioner of Prohibition and Excise, Warangal, to compound the offence booked in Crime No.231/94-95 on the file of the Prohibition & Excise Station, Jangaon and to pass appropriate orders.

2. The case of the writ petitioner is that on 07-09-1995, the Prohibition & Excise Inspector has checked the vehicle belonging to the writ petitioner and seized the same under the cover of a Panchanama alleging that the said vehicle was used for

transportation of 20 litres of I.D. Liquor together with 100 Kgs. of black jaggery, one Kg. of Navasagaram and Alam and booked a case in Crime No.231/94-95. The case was booked under Section 34 (a) and (e) of the Andhra Pradesh Excise Act, 1968 (Act No.17 of 1968) (in short 'the Excise Act'). The writ petitioner asserts that the offence alleged to have been committed by him in fact is the one which falls under Section 8 of the Andhra Pradesh Prohibition Act,1995 (Act No.17 of 1995) (in short 'the Prohibition Act'). The offences falling under Section 8 of the Prohibition Act are compoundable whereas the offences falling under Section 34 of the Excise Act are not compoundable offences. The learned counsel for the petitioner points out that there is no discretion vested in the hands of the investigating or prosecuting agency to book an offence if it is one committed under the Prohibition Act to be booked under Section 34 of the Excise Act. It will be relevant to point out that if a conduct of a party is such which is covered by the provisions contained under Section 8 of the Prohibition Act, the same must necessarily be prosecuted under the said Act. It will be relevant to notice that the Excise Act has been enacted for achieving the objectives of regulating the production, manufacture, possession, transport, purchase and sale of intoxicating liquors and drugs and also for the purpose of levy of duties of excise and countervailing duties on different alcoholic liquors meant for human consumption and other related aspects. Whereas the Prohibition Act has been enacted to enforce the policy of the Prohibition of consumption of intoxicating liquors in the State and thus given effect to the directive principles of State Policy enshrined in Article 47 of our Constitution. Therefore, provisions contained in the Excise Act rendered them to be construed as a general piece of legislation while the Prohibition Act is liable to be construed as a special piece of legislation for the purpose of achieving a specified objective. This apart, the Prohibition Act being a latter enactment, has got to be necessarily construed to have been enacted with the full knowledge of the entire scope of the provisions contained in Act 17 of 1968. Therefore, if the legislature in it's wisdom has construed that the scheme elaborated in the special piece of legislation will have overriding effect by Amendment Act 17 of 1995, the said legislature has incorporated a new provision in the form of Section 11 (B) in the Prohibition Act enabling certain class of offences falling under Section 8 or Section 9 of the said enactment to be compounded. There is no dispute that a specified procedure had been contemplated by Section 11 (B) of the Prohibition Act and exercise of the said phibition Act, is liable to be prosecuted under the said enactment but the prosecuting agency cannot be left with the discretion of

prosecuting him under the provisions of Section 34 of the Excise Act. The principle of applicability of a less rigorous penal provision gets attracted in case of this nature. The writ petitioner or for that matter any accused is entitled to solicit the benefit of being tried and prosecuted by a less rigorous provision. I therefore, consider it appropriate to direct the second respondent herein to consider the application submitted by the writ petitioner on 15-03-2007 to compound the offence for he has been tried under Section 34 of the Excise Act, duly treating the same as one which has been committed under Section 8 of the Prohibition Act. The second respondent may consider to deal with the application dated 15-03-2007 strictly on it's merits and in accordance with law and uninfluenced by the observations made in this writ petition. The entire exercise may be completed within a period of three months from today.

3. The writ petition stands disposed of. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

21-03-2007

Stp